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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/516,752

09/21/2005

Oreste Caselli

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6655

30448

7590

02/27/2008

AKERMAN SENTERFITT

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EXAMINER

CHIVUKULA, SURAJ

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

02/27/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/516,752	<b>Applicant(s)</b> CASELLI ET AL.	
	<b>Examiner</b> SURAJ CHIVUKULA	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12/6/2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) 4 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12/6/2004</u> .   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The references listed in the Information Disclosure Statement filed on December 6, 2004 have been considered by the examiner (see attached PTO-326 form).

### ***Priority***

2. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Claim Objections***

3. Claim 4 is objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim cannot be dependent on a prior multiple dependent claim. See MPEP § 608.01(n). Accordingly, claim 4 has not been further treated on the merits.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Examiner notes that “preparing a risotto according

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to the sequence provided for by the traditional recipe” does not distinctly claim the subject matter which the applicant regards as his invention. “Traditional recipe” does not necessarily mean method steps alone. Applicant has provided merely a generic guideline for what constitutes a “traditional recipe”. As a result, it is unclear as to what is included and excluded from the claims.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-3 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamamoto et al. (6,770,312).

Regarding claims 1 and 3, Yamamoto discloses a method of producing a frozen food product or risotto with rice by adding the rice to the liquid ingredient of tomato sauce and particulate ingredients including vegetables, cooking all of the ingredients (column 1 lines 5-13, column 12 lines 35-37), cooling (column 12 lines 36-40), quick freezing (column 2 lines 23-27), and packaged with a low-density polyethylene packaging material having a specified thickness of 40 micrometers (column lines 45-50).

It should be noticed that Yamamoto fails to disclose preparing risotto according to the "traditional recipe", packaging into bags or boxes, a dosing apparatus, and the portions being drop-shaped.

Examiner notes that applicant's definition of "traditional recipe" for risotto does not distinctly claim the subject matter which the applicant regards as his invention. Examiner takes the position that "traditional recipe" is understood to mean having the rice cooked together with a sauce and other ingredients (Specification page 2). It is well known in the food art for low-density polyethylene packaging material to be made into bags or plastic boxes. Form-fill-seal machines are a well known type of dosing apparatus used for dosing of food products containing rice and soups into specified weights and volumes. Matters relating to ornamentation or shape only cannot be relied upon to patentably distinguish the claimed invention from the prior art. In this case, the particular shape of the product is of no patentable significance.

It would have been obvious to one of ordinary skill in the art at the time the invention was made for a low-density polyethylene packaging material to be made into bags or plastic boxes, to utilize a dosing apparatus to dispense the product, and to vary the shape of the product.

8. Regarding claim 2, Yamamoto discloses a method where starch grains consisting of wheat are selected (column 7 lines 35-40). Examiner notes that starch is a primary ingredient known to occur in wheat.

9. Regarding claim 5, Yamamoto discloses a frozen dish with rice (column 2 lines 23-27) in the form of a plurality of portions (column 2 lines 32-36, column 9 lines 16-20) of pre-determined volume or weight (column 9 lines 18-20) with the ingredients in the appropriate ratios (column 9 lines 1-8).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Suraj Chivukula whose telephone number is (571) 270-3471. The examiner can normally be reached on M-F 7:30am-5:00pm EST (1st Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carol Chaney can be reached on (571) 272-1284. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Supervisory Patent Examiner, Art Unit 1761

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Examiner  
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